

### REMARKS

Reconsideration is requested.

Claims 1, 8 and 12 are pending.

The Section 112, first paragraph "written description", rejection is claim 1 is traversed. Reconsideration and withdrawal of the rejection are requested in view of the following.

The Examiner asserts as a basis for the rejection that the recitation of "a 16S rRNA sequence having more than 97% similarity to SEQ ID NO:1" in claim 1 allegedly "neither has literal support in the as-filed specification by way of generic disclosure, nor are their specific examples ... which would show possession of the other species." See page 4 of the Office Action dated September 18, 2009. The Examiner is requested to see however page 2 of the originally-filed specification which describes the applicants invention as follows (emphasis added):

"The invention is directed in particular toward the bacterial strains defined above, characterized by the sequence SEQ ID No. 1 of the 16S rRNA: .... or a sequence having 97% similarity with SEQ ID No. 1."

Claim 3 of the originally-filed application further defined the applicants invention as follows (emphasis added):

"The bacterial strain as claimed in claim 1 or 2, characterized by SEQ ID No. 1 of the 16S rRNA: ...or a sequence having more than 97% similarity with SEQ ID No. 1."

One of ordinary skill will appreciate that, contrary to the Examiner's assertions, the applicants have literally described in the specification the aspect of the claims objected to by the Examiner.

Withdrawal of the Section 112, first paragraph "written description", rejection of claim 1 is requested.

The Section 112, first paragraph "enablement", rejection of claims 1, 8 and 12 is obviated by the deposit of the biological material according to the conditions of the Budapest Treaty, as noted by the Examiner, along with the additional assurance that the deposited biological materials will be irrevocably released to the public upon the issuance of a patent requiring the same. See page 5 of the Office Action dated September 18, 2008. Withdrawal of the Section 112, first paragraph "enablement", rejection is requested.

The Section 102 and Section 103 rejection of claim 1 over Farrow (International Journal of Systematic Bacteriology, Vol. 44, No. 1, 1994, pp 74-82) "in light of" BLAST Basic local alignment search, is traversed. Reconsideration and withdrawal of the rejection are requested in view of the following distinguishing remarks.

The rejected claim defines "An isolated bacterial strain which is a *Exiguobacterium* of the *lactigenes* strain". As admitted by the Examiner, the cited art describes a bacterial strain which is a *Exiguobacterium aurantiacum*. See page 7 of the Office Action dated September 18, 2008. The Examiner asserts that "the mere difference in names would not make a known species novel." See page 8 of the Office Action dated September 18, 2008.

The Examiner is urged to appreciate that the differences between an *Exiguobacterium lactigenes* and an *Exiguobacterium aurantiacum* are more than "mere differences in ... names" but rather the purpose of the taxonomic system of naming

biological materials is for the purpose of distinguishing biological materials which have been shown to be distinct. The Examiner's assertion, if true, would undermine the taxonomic identification and classification of biological materials.

The applicants submit that while there may be a similarity above 97% between rRNA 16S of *E.aurantiacum* and the deposited strain, DNA-DNA hybridization experiments have shown a similarity of only 34%, which will be understood by one of ordinary skill in the art to confirm the species are distinct. Accordingly, contrary to the Examiner's assertions, the claimed strain is distinct from the strain of the cited art. For example, *E.lactigenes* is lactate + (high production of lactate), as claimed, while *E.aurantiacum* mainly produces acetate, formylate and formate.

The claimed invention is not described in the cited art and the claimed invention would not have been obvious from the cited art. Withdrawal of the Section 102 and Section 103 rejection of claim 1 is requested.

The claims are submitted to be in condition for allowance and a Notice to that effect is requested. The Examiner is requested to contact the undersigned, preferably by telephone, in the event anything further is required in this regard.

FARDEAU et al.  
Appl. No. 10/538,715  
Atty. Dkt. 1721-94  
Response  
January 21, 2009

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By:                     /B. J. Sadoff/                      
B. J. Sadoff  
Reg. No. 36,663

BJS:  
901 North Glebe Road, 11th Floor  
Arlington, VA 22203-1808  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100